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HELGA PEDERSEN
MOOT COURT COMPETITION

Orwell

VS

Valdora

Submission of the Applicant

Table of Contents

A. List of References	iv
1. Primary Sources	iv
1.1 Conventions	iv
1.2 Case law of the ECtHR	iv
2. Secondary Sources	vii
B. List of Abbreviations	ix
C. Summary of Submissions	x
D. Submissions	1
I. Admissibility	1
1. The application is admissible under Article 34 of the Convention	1
1.1. Victim status	1
2. The application is admissible under Article 35 of the Convention	1
2.1. The exhaustion of domestic remedies	1
2.2. Compliance with the four-month time-limit	2
2.3. The application is not manifestly ill-founded	2
II. Merits	3
1. There has been a violation of Article 6 § 1 of the Convention	4
1.1. Reliance on AI-generated evidence and the requirements of adversarial scrutiny	4
1.1.1. The need for heightened judicial scrutiny of AI-generated evidence	4
1.1.2. The decisive role of the Orion analysis in the evidentiary assessment	8
1.2. Equality of arms and the Applicant's position vis-à-vis the prosecution	10
1.2.1. Structural imbalance between the parties in access to the Orion evidence	10

1.2.2. Lack of adequate justification and counterbalancing safeguards	12
2. There has been a violation of Article 6 § 3(b) of the Convention	14
2.1. Inadequate facilities for the preparation of the defence	14
2.2. Justification for the restriction on defence facilities	15
2.3 Absence of adequate counterbalancing safeguards	17
3. Cumulative effect of the procedural deficiencies under Article 6 §§ 1 and 3(b) of the Convention	19
III. Conclusion	20

A. List of References

1. Primary Sources

1.1 Conventions

1. European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, ETS No.5.
2. Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law 2024, CETS No. 225.

1.2 Case law of the ECtHR

1. Sytnyk v. Ukraine, app. no. 16497/20, 24 July 2025.
2. Yukcel Yalcinkaya v. Turkiye [GC], app. no. 15669/20, 26 September 2023.
3. Kikabidze v. Georgia, app. no. 57642/12, 16 February 2022.
4. Ayetullah AY v. Turkey, app. nos. 29084/07 and 1191/08, 8 March 2021.
5. Kobiashvili v. Georgia, app. no. 36416/06, 14 June 2019.
6. Farcas and Others v. Romania, app. no. 30502/05, 5 June 2018.
7. Regner v. the Czech Republic [GC], app. no. 35289/11, 19 September 2017.
8. Karajanov v. “The Former Yugoslav Republic of Macedonia”, app. no. 2229/15, 6 July 2017.
9. Carmel Saliba v. Malta, app. no. 24221/13, 24 April 2017.
10. Manucharyan v. Armenia, app. no. 35688/11, 24 February 2017.
11. Zyakun v. Ukraine, app. no. 34006/06, 25 May 2016.
12. Hajrulahu v. “The Former Yugoslav Republic of Macedonia”, app. no. 37537/07, 29 January 2016.
13. Zavodnik v. Slovenia, app. no. 53723/13, 21 August 2015.
14. Schatschaschwill v. Germany [GC], app. no. 9154/10, 15 December 2015.

15. Roman Zakharov v Russia [GC], app. no. 47143/06, 4 December 2015.
16. Beraru v. Romania, app. no. 40107/04, 8 September 2014.
17. Ternovskis v. Latvia, app. no. 33637/02, 29 July 2014.
18. Centre for legal resources on behalf of Valentin Câmpeanu v Romania [GC], app. no. 47848/08, 17 July 2014.
19. Erkapic v. Croatia, app. no. 51198/08, 25 July 2013.
20. Maktouf and Damjanovic v Bosnia and Herzegovina [GC], app. no. 2312/08 and 34179/08, 18 July 2013.
21. Ajdaric v. Croatia, app. no. 20883/09, 4 June 2012.
22. Creanga v. Romania [GC], app. no. 29226/03, 23 February 2012.
23. Al-Khajawa and Tahery v. The United Kingdom [GC], app. nos. 26766/05 and 22228/06, 15 December 2011.
24. Shimovolos v. Russia, app. no. 30194/09, 21 June 2011.
25. Sakhnovskiy v. Russia [GC], app. no. 21272/03, 2 November 2010.
26. Gafgen v. Germany [GC], app. no. 22978/05, 1 June 2010.
27. Lisica v. Croatia, app. no. 20100/06, 25 May 2010.
28. Cudak v. Lithuania [GC], app. no. 15869/02, 23 March 2010.
29. Natunen v. Finland, app. no. 21022/04, 30 June 2009.
30. Bykov v. Russia [GC], app. no. 4378/02, 10 March 2009.
31. Iordachi and Others v. Moldova, app. no. 25198/02, 10 February 2009.
32. Petukhov v. Russia, app. no. 17853/09, 1 December 2008.
33. Moiseyev v. Russia, app. no. 62936/00, 9 October 2008.
34. Burden v UK [GC], app. no. 13378/05, 29 April 2008.
35. Bobek v. Poland, app. no. 68761/01, 10 December 2007.

36. Matyjek v. Poland, app. no. 38184/03, 24 September 2007.
37. Klimentyev v. Russia, app. no. 46503/99, 23 May 2007.
38. Dima v. Romania, app. no. 58472/00, 26 March 2007.
39. Jalloh v. Germany [GC], app. no. 54810/00, 11 July 2006.
40. Nachova and Others, v. Bulgaria [GC], app. nos. 43577/98 and 43579/98, 6 July 2005.
41. Ocalan v. Turkey [GC], app. no. 46221/99, 12 May 2005.
42. Dowsett v. The United Kingdom, app. no. 39482/98, 29 September 2003.
43. Gagli v. Austria, app. no. 63950/19, 8 February 2003.
44. Allan v. The United Kingdom, app. no. 48539/99, 5 February 2003.
45. G.B. v. France, app. no. 44069/98, 2 January 2002.
46. Sadak and Others v. Turkey, app. no. 29900/96, 29901/96, 17 July 2001.
47. Atlan v. The United Kingdom, app. no. 36533/97, 19 June 2001.
48. Cyprus v. Turkey [GC], app. no. 25781/94, 10 May 2001.
49. McELHINNEY v. Ireland, app. no. 31253/96, 21 November 2001.
50. Zoon v. the Netherlands, app. no. 12446/86, 7 December 2000.
51. Coeme and Others v. Belgium, app. nos. 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96, 18 October 2000.
52. Kuopila v. Finland, app. no. 27752/95, 27 July 2000.
53. Salman v. Turkey [GC], app. no. 21986/93, 27 June 2000.
54. Krcmar and Others v. Switzerland, app. no. 35376/97, 3 June 2000.
55. Rotaru v. Romania [GC], app. no. 28341/95, 4 May 2000.
56. Labita v. Italy [GC], app. no. 26772/95, 6 April 2000.
57. Dulaurans v. France, app. no. 34553/97, 21 March 2000.
58. Jasper v. The United Kingdom [GC], app. no. 27052/95, 16 February 2000.

59. Fitt v. the United Kingdom, app. no. 29777/96, 16 February 2000.
60. Rowe and Davis [GC], app. no. 28901/95, 16 February 2000.
61. Bernard v France, app. no. 159/196/778/979, 23 April 1998.
62. Van Mechelen and Others v. the Netherlands, app. no. 21363/93, 23 April 1997.
63. Mantovanelli v France, app. no. 21497/93, 18 March 1997.
64. Foucher v. France, app. no. 22209/93, 18 March 1997.
65. Niderost-Huber v. Switzerland, app. no. 18990/91, 18 February 1997.
66. Akdivar and Others v. Turkey [GC], app. no. 21893/93, 16 September 1996.
67. Bulut v. Austria, app. no. 17358/90, 22 February 1996.
68. Kemmache v France, app. no. 17621/91, 24 November 1994.
69. Dombo Beheer B.V. v. The Netherlands, app. no. 14448/88, 27 October 1993.
70. Edwards v The United Kingdom, app. no. 13071/87, 16 December 1992.
71. Hadjianastassiou v. Greece, app. no. 12945/87, 16 December 1992.
72. Brandstetter v. Austria, app. no. 13468/87, 28 August 1991.
73. Barbera, Messegue and Jabardo v. Spain, app. no. 10590/83, 6 December 1988.
74. Malone v. the United Kingdom, app. no. 8691/79, 2 August 1984.
75. Artico v. Italy, app. no. 6694/74, 13 May 1980.
76. The Sunday Times v. the United Kingdom, app. no. 6538/74, 26 April 1979.
77. Klass and Others v. Germany, app. no. 5029/71, 6 September 1978.
78. Ireland v. the United Kingdom, app. no. 5310/71, 18 January 1978.

2. Secondary Sources

1. Ana-Maria Telbis and Darko Pavlovksi, “Fair Trial Rights”, Council of Europe 2018.

2. European Court of Human Rights, Practical Guide on Admissibility Criteria (updated 31 August 2025).
3. Explanatory Report to the Council of Europe Framework Convention on AI and Human Rights, Democracy and the Rule of Law.
4. Hilde Weerts, Raphaele Xenidis, Fabien Tarissan, Henrik Palmer Olsen, Mykola Pechenizkiy: Algorithmic Unfairness through the Lens of EU Non-Discrimination Law: Or Why the Law is not a Decision Tree, 12 June 2023.
5. Valérie Beaudouin, Isabelle Bloch, David Bounie, Stéphan Cléménçon, Florence d'Alché-Buc, et al., Flexible and Context-Specific AI Explainability: A Multidisciplinary Approach.

B. List of Abbreviations

AI	Artificial Intelligence
Applicant	Ms Lyra Orwell
app. no(s)	Application number(s)
CoE	Council of Europe
CoE Framework Convention	Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law
ECHR/The Convention	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR/The Court	The European Court of Human Rights
GC	Grand Chamber
Q.	Question
The Respondent/Government	The State of Valdora
v.	Versus

C. Summary of Submissions

- The Applicant submits that jurisdiction is established and the case is admissible under Articles 34 and 35 of the European Convention.
- The Applicant argues that Article 6 § 1 of the Convention was violated, as the conviction was based decisively on AI-generated evidence that was not subject to effective adversarial scrutiny. Given its technical complexity and opacity, the AI evidence required particularly rigorous judicial examination, which was not undertaken. The domestic courts nevertheless accorded decisive weight to the Orion analysis in their assessment of guilt.
- Furthermore, the Applicant was placed at a substantial disadvantage vis-à-vis the prosecution, contrary to the principle of equality of arms under Article 6 § 1 of the Convention. This disadvantage stemmed from a structural imbalance in access to and understanding of the Orion evidence, coupled with the absence of adequate justification or counterbalancing procedural safeguards.
- Finally, the Applicant argues that Article 6 § 3(b) of the Convention was violated due to the lack of adequate facilities for the preparation of the defence. The restrictions imposed on the defence's access to necessary materials and information was not justified by any legitimate aim. Moreover, these limitations were not offset by sufficient procedural safeguards capable of preserving the overall fairness of the proceedings.

D. Submissions

1. The Applicant submits that Valdora violated her rights guaranteed under Article 6 § 1 and Article 6 § 3(b) of the European Convention on Human Rights.

I. Admissibility

2. The requirements set forth by Articles 34 and 35 of the ECHR are fulfilled.

1. The application is admissible under Article 34 of the Convention

1.1. Victim status

3. The Applicant submits that she qualifies as a direct victim of a violation of her rights guaranteed under Article 6 § 1 and Article 6 § 3(b) of the Convention, within the meaning of Article 34 of the ECHR.

4. According to the Court's established case-law, Article 34 does not permit *actio popularis*. An applicant must demonstrate that she has been directly affected by the measure complained of to trigger the Convention's protection mechanism.¹

5. In the present case, the Applicant has suffered direct harm as a result of the criminal proceedings against her. She was arrested and sentenced to four years and three months' imprisonment, together with an order to pay compensation of EUR 30,000.² The Applicant submits that these measures were imposed following criminal proceedings conducted in breach of the guarantees under Article 6 § 1 and Article 6 § 3(b) of the Convention.

6. Accordingly, the Applicant satisfies the victim status requirement under Article 34 of the Convention.

2. The application is admissible under Article 35 of the Convention

2.1. The exhaustion of domestic remedies

7. The Applicant submits that she has exhausted all available remedies at the domestic level before lodging the present application with the Court.

¹ *Burden v UK* [GC], app. no. 13378/05, § 33; *Klass and Others v. Germany*, app. no. 5029/71 § 33; *Ireland v. the United Kingdom*, app. no. 5310/71 § 239; *Roman Zakharov v Russia* [GC], app. no. 47143/06, § 164; *Centre for legal resources on behalf of Valentin Câmpeanu v Romania* [GC], app. no. 47848/08, § 96.

² Case facts, § 16.

8. According to the Court's settled case-law, the rule of exhaustion of domestic remedies under Article 35 § 1 of the Convention requires applicants to make normal use of remedies which are available, sufficient and effective in respect of the alleged violations, thus dispensing States from answering before the European Court for their acts before they have had an opportunity to put matters right through their own legal system.³

9. In the present case, following her conviction, at first instance, the Applicant applied to the Meganissi Court of Appeal and then submitted a human-rights appeal to the Supreme Court of Valdora, arguing the violation of her right to a fair trial, the principle of equality of arms and the right to prepare her defence. The Supreme Court declared the appeal inadmissible on 29 June 2025.⁴ Accordingly, no further domestic remedies were available to the Applicant.

2.2. Compliance with the four-month time-limit

10. The Applicant lodged her application with the Court on 6 August 2025, that is, one month and eight days after the final decision of the Supreme Court of Valdora, dated 29 June 2025.⁵ Accordingly, the four-month time-limit has been duly observed.

2.3. The application is not manifestly ill-founded

11. The Applicant submits that her complaints are not manifestly ill-founded within the meaning of Article 35 § 3(a) of the Convention.

12. According to the approach upheld by the Court, complaints declared manifestly ill-founded may fall into the following categories: "fourth instance" complaints, complaints where there is clearly no violation, "unsubstantiated" complaints, and confused or "far-fetched" complaints.⁶ The present application does not fall within any of these categories.

13. Firstly, the Applicant does not seek to have the Court function as a "fourth instance" court to merely review the findings of the national courts. She fully acknowledges that Court is not a court of appeal and that it is not its function to re-examine the facts of the case, reassess the evidence or substitute its own assessment for that of the national court.⁷

³ Maktouf and Damjanovic v Bosnia and Herzegovina [GC], app. no. 2312/08 and 34179/08, § 58; Akdivar and Others v Turkey [GC], app. no. 21893/93, § 65-69.

⁴ Case facts, § 18-19.

⁵ Case facts, § 20.

⁶ Practical Guide on Admissibility Criteria, § 369.

⁷ Kemmache v France, app. no. 17621/91, § 44.

However, it is equally well established in the Court's case-law that, while it does not review alleged errors of fact or law as such, it remains fully competent to examine whether the criminal proceedings, viewed as a whole, complied with the procedural requirements of Article 6 of the Convention, including the principles of adversarial proceedings, equality of arms, and the effective exercise of defence rights.⁸ In the present case, the Applicant therefore does not invite the Court to reassess the evidence or to revisit the domestic courts' factual findings. Rather, she complains that the national courts failed to secure the fundamental procedural guarantees of a fair trial under Article 6 § 1 and Article 6 § 3(b) of the Convention. In particular, she alleges that the proceedings were affected by structural procedural deficiencies, notably the reliance on decisive AI-generated evidence which was inaccessible to the defence and could not be meaningfully challenged.⁹

14. Secondly, the Applicant raises an arguable claim under the Convention. She complains that the denial of meaningful access to decisive AI-generated evidence impaired the adversarial nature of the proceedings, undermined the equality of arms, and prevented her from preparing an effective defence, contrary to Article 6 § 1 and Article 6 § 3(b) of the Convention.

15. These allegations are neither abstract nor speculative. They concern the concrete manner in which the criminal proceedings were conducted against the Applicant and therefore disclose arguable complaints of procedural unfairness which warrant examination on the merits. Accordingly, the application cannot be dismissed as manifestly ill-founded.

II. Merits

16. Article 6 of the Convention, read as a whole, guarantees the right to a fair trial. In assessing whether criminal proceedings comply with this provision, the Court has consistently held that regard must be had to the proceedings as a whole, including the manner in which evidence was obtained and assessed, whether the rights of the defence were respected and whether the accused was afforded a genuine opportunity to challenge the authenticity, reliability and use of the evidence relied upon against her.¹⁰

⁸ *Bernard v France*, app. no. 159/196/778/979, § 37; *Edwards v The UK*, app. no. 13071/87, § 34; *Mantovanelli v France*, app. no. 21497/93, § 34.

⁹ Case facts § 20.

¹⁰ *Beraru v. Romania*, app. no. 40107/04, § 75; *Bykov v. Russia*, app.no. 4378/02, § 90; *Allan v. The United Kingdom*, app.no. 48539/99, § 43; *Erkapic v. Croatia*, app.no. 51198/08, §§ 72-73; *Lisica v. Croatia*, app.no.

17. The Applicant complains that the criminal proceedings against her failed with the requirements of Article 6 § 1 and Article 6 § 3(b) of the Convention.

18. In particular, the Applicant argues that: (1) the domestic courts relied decisively on AI-generated evidence produced by the Orion system in circumstances where its reliability and probative value could not be effectively examined within a fair and adversarial process, in breach of Article 6 § 1; (2) the proceedings were marked by a structural imbalance between the prosecution and the defence, as the assessment of the AI-generated evidence was based predominantly on evaluations by public authorities and experts who enjoyed privileged access to Orion's underlying data,¹¹ while the defence was denied access to the same material, thereby undermining the principle of equality of arms inherent in Article 6 § 1; and (3) the Applicant was deprived of adequate facilities to prepare her defence, within the meaning of Article 6 § 3(b) of the Convention, as she was denied access to Orion's source code, training data, and audit report,¹² which were necessary to obtain effective counter-expertise and to meaningfully challenge the prosecution's technical evidence.

1. There has been a violation of Article 6 § 1 of the Convention

1.1. Reliance on AI-generated evidence and the requirements of adversarial scrutiny

19. The Applicant submits that her conviction was based on evidence that was not capable of effective adversarial scrutiny. The domestic courts relied decisively on AI-generated attribution findings produced by the Orion system, the reliability and probative value of which could not be independently verified or meaningfully challenged by the defence. Accordingly, the manner in which the evidence was obtained, assessed and relied upon rendered the proceedings incompatible with the guarantees of Article 6 § 1 of the Convention.

1.1.1. The need for heightened judicial scrutiny of AI-generated evidence

20. The Applicant submits that AI-generated evidence, by its very nature, calls for heightened judicial scrutiny under Article 6 § 1 of the Convention, particularly where it plays

20100/06, § 49; Gafgen v. Germany [GC], app.no. 22978/05, § 164; Kobiashvili v. Georgia, app.no. 36416/06, §56; Rowe and Davis[GC], app.no. 28901/95, § 60.

¹¹ Clarification Q. N18.

¹² Case study § 11.

a central role in establishing criminal liability. Such scrutiny is necessary to ensure that the accused is afforded a genuine opportunity to challenge the reliability, accuracy, and probative value.¹³

21. The Court has consistently held that the fairness of the criminal proceedings within the meaning of Article 6 of the Convention depends, *inter alia*, on whether the evidence relied upon by the domestic courts was obtained and assessed in a manner compatible with the rights of the defence and whether the conviction was based on evidence of sufficient reliability and probative value.¹⁴ In *Yukcel Yalcinkaya v. Turkiye*, the Court recognised that digitally generated evidence differs in significant respects from traditional forms of proof and raises distinct concerns regarding authenticity, accuracy, and integrity, particularly due to its susceptibility to alteration and the technical complexity involved in its collection and analysis. The Court also reiterated that the use of untested electronic evidence in criminal proceedings may involve particular difficulties for the judiciary, as the nature of the procedure and technology applied to the collection of such evidence is complex and may therefore diminish the ability of national judges to establish its authenticity, accuracy and integrity. Moreover, the handling of electronic evidence, particularly where it concerns data that are encrypted and/or vast in volume or scope, may pose serious practical and procedural challenges for law enforcement and judicial authorities at both the investigation and trial stages.¹⁵

22. The need for enhanced judicial scrutiny is also reflected in relevant Council of Europe standards. The Council of Europe Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law emphasizes that high-risk uses of AI, including in the field of criminal justice, require transparency, accountability, and reliability assessment throughout the AI lifecycle.¹⁶ These standards underscore that where AI systems are deployed in contexts of affecting individual liberty, domestic authorities must apply safeguards capable of ensuring compatibility with fundamental procedural guarantees.

23. While the Applicant does not invoke the Framework Convention as an autonomous source of a violation, the Court has consistently held, *inter alia*, in *McElhinney v. Ireland* that “Convention, including Article 6, cannot be interpreted in a vacuum. The Court must be

¹³ Schatschaschwili V. Germany, app.no. 9154/10, § 118.

¹⁴ Barbera, Messegue and Jabardo v. Spain, app.no. 10590/83, § 68.

¹⁵ Yukcel Yalcinkaya v. Turkiye[GC], app.no. 15669/20, § 312.

¹⁶ Explanatory Report to the CoE Framework Convention on AI and Human Rights, Democracy and the Rule of Law, § 53.

mindful of the Convention's special character as a human rights treaty, and must also take into account the relevant rules of international law."¹⁷ This is particularly so where the respondent State is a party to, or has expressly committed itself to, such instruments. In the present case, Valdora has signed the Framework Convention,¹⁸ thereby those standards inform the interpretation of Article 6 § 1 of the Convention.

24. The present case concerns precisely such a category of technically mediated evidence. In particular, the prosecution's case relied heavily on the output of Orion system,¹⁹ which attributed at least three online scam profiles to the Applicant based on behavioural indicators such as writing style, emoji usage, and time-of-day activity, with a reported accuracy rate of 96.4%.²⁰ Such probabilistic, algorithmic conclusions differ in important respects from conventional forensic evidence, as they are derived from pattern recognition and statistical inference rather than from direct, verifiable links between the accused and the alleged criminal conduct. In particular, the need for heightened scrutiny arises from following inherent characteristics.

25. Firstly, Orion operated as a non-transparent "black box", limiting meaningful judicial and adversarial scrutiny. Modern AI systems, especially those based on machine learning, are characterized by opacity: their internal logic and decision-making process are not readily interpretable, even by their developers.²¹ In the present case, Orion analyses behavioural indicators such as typing speed, language patterns, emoji use, sentence structure, time-of-day activity and metadata.²² While this description identifies the categories of data relied upon by the system, it does not explain how these indicators are processed, weighted, or combined, nor how competing explanations are assessed. As Orion's source code, training data and audit documentation were withheld from the defence, neither the Applicant nor her expert was in a position to verify whether alternative hypotheses - including the Applicant's claim that her Opengram account had previously been hacked²³ or that her online identity may have been misused²⁴, meaningfully tested and excluded. In the absence of such transparency, it was not possible to assess whether the incriminating attribution resulted from a genuine causal link or

¹⁷ *McElhinney v. Ireland*, app.no. 31253/96 § 36.

¹⁸ Case facts § 21.

¹⁹ Case facts § 13.

²⁰ Case facts § 7.

²¹ Valérie Beaudouin, Isabelle Bloch, David Bounie, Stéphan Cléménçon, Florence d'Alché-Buc, et al., *Flexible and Context-Specific AI Explainability: A Multidisciplinary Approach*, p. 11

²² Case facts § 28(4), p. 6.

²³ Case facts § 6.

²⁴ Case facts § 12.

merely from behavioural similarities compatible with multiple factual scenarios. This opacity undermined the defence's ability to challenge the reliability and probative value of the AI-generated evidence and heightened the need for careful judicial scrutiny.

26. Secondly, unlike human expert evidence, which is accompanied by an articulated methodology and reasoning that can be examined and contested through adversarial procedures, AI-generated outputs, output in this case by Orion, consists of a conclusory attribution expressed in probabilistic terms.²⁵ Orion did not provide an intelligible explanation as to how the various behavioural indicators relied upon were evaluated or why they led to the conclusion that the Applicant operated the scam profiles. As a result, the defence was deprived of any meaningful opportunity to understand the logical basis of the incriminating inference and to challenge it through questioning, counter-argument, or alternative expert analysis. The Court has consistently held that the right to a fair trial requires that the accused be able to contest the reliability and probative value of the evidence relied upon by the prosecution in a practical and effective manner.²⁶ In the present case, since the evidence was presented in a form that does not disclose the reasoning underlying the conclusion, that right was rendered illusory.

27. Thirdly, AI systems are inherently subject to error rates and risks of bias arising from the nature of their training data, model design and operational constraints. When AI-generated conclusions are used to attribute criminal liability, these inherent limitations acquire particular significance, as even a low margin of error may have serious consequences for individual liberty.²⁷ In the present case, although the court-appointed expert expressly acknowledged that a false positive could not be excluded,²⁸ the domestic courts did not require the disclosure of validation studies, bias assessments or audit documentation capable of demonstrating the reliability and limits of Orion's conclusions in practice.

28. Finally, the need for heightened judicial scrutiny is reinforced by relevant Council of Europe standards concerning the use of artificial intelligence in high-risk contexts. Under

²⁵ Karen McGregor Richmond, Satya M. Muddamsetty, Thomas Gammeltoft-Hansen, Henrik Palmer Olsen, Thomas B. Moeslund, *Explainable AI and Law: An Evidential Survey*, § 2.

²⁶ *Yuksel Yalcinkaya v. Turkiye*, app.no. 15669/20, § 305; *Carmel Saliba v. Malta*, app.no. 24221/13, § 65; *Ayetullah AY v. Turkey*, app.nos. 29084/07 and 1191/08, § 127; *Cudak v. Lithuania[GC]*, app.no. 15869/02, § 58; *Karajanov v. "The Former Yugoslav Republic of Macedonia"*, app.no. 2229/15, § 51; *Dulaurans v. France*, app.no. 34553/97, § 33; *Artico v. Italy*, app.no. 6694/74, § 33; *Ajdarić v. Croatia*, app.no. 20883/09, §33; *Dima v. Romania*, app.no. 58472/00, § 34.

²⁷ Hilde Weerts, Raphael Xenidis, Fabien Tarissan, Henrik Palmer Olsen, Mykola Pechenizkiy: *Algorithmic Unfairness through the Lens of EU Non-Discrimination Law: Or Why the Law is not a Decision Tree*, 12 June 2023, §4.1.

²⁸ Case facts § 15.

Article 4(1) of the CoE Framework Convention, States commit to ensuring that AI systems operate consistently with human rights and the rule of law,²⁹ while Article 9 emphasises accountability for adverse human-rights impacts arising from AI use.³⁰ In the present case, these principles acquire particular relevance in light of the fact that Orion was approved only shortly before the Applicant's arrest, had never previously been subjected to judicial examination, and that the Applicant's case was the first criminal proceeding in Valdora to reach the court stage relying on its output.³¹ Moreover, although domestic law required periodic human-rights due-diligence and impact assessments, the first such review of Orion was still ongoing at the time of the proceedings, and the ethical oversight mechanism envisaged by the regulatory framework had not yet been established.³²

29. Taken together, these characteristics demonstrate that AI-generated attribution evidence constitutes a category of proof requiring heightened judicial scrutiny under Article 6 § 1 of the Convention.

1.1.2. The decisive role of the Orion analysis in the evidentiary assessment

30. The Applicant submits that in the present case AI-generated evidence, was relied on as the decisive element to secure her conviction by the domestic courts, without duly addressing her concerns regarding their integrity and evidential value and in disregard of the principles of equality of arms and adversarial proceedings.

31. According to the established case-law, including *Manucharyan v. Armenia* and *Al_khajawa and Tahery v. The United Kingdom*,³³ where a conviction is based solely or decisively on evidence that the defence has been unable to effectively challenge, the rights of the defence are unduly restricted unless sufficient counterbalancing factors are present. In this context the word “decisive” should be narrowly understood as an indicating evidence of such

²⁹ Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law; Explanatory Report to the CoE Framework Convention on AI and Human Rights, Democracy and the Rule of Law, §§ 37-41.

³⁰ Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law; Explanatory Report to the CoE Framework Convention on AI and Human Rights, Democracy and the Rule of Law, §§ 66-70.

³¹ Case facts § 28 (5), p.6.

³² Case facts § 28 (6), p.6.

³³ *Manucharyan v. Armenia*, app.no. 35688/11, § 47(v, vi); *Al-Khajawa and Tahery v. The United Kingdom*[GC], app.nos. 26766/05 and 22228/06, § 119; *Schatschaschwili v. Germany*[GC], app.no. 9154/10, §§ 111-131.

significance or importance likely to be determinative of the outcome of the case.³⁴ While the “sole or decisive” principle has traditionally applied to untested witness testimony, its underlying rationale is broader: it seeks to prevent convictions based on evidence whose reliability cannot be properly assessed through adversarial proceedings. That rationale applies with equal force where incriminating evidence is generated by a technical system that is inaccessible and unchallengeable for the defence.

32. In the present case, although the prosecution formally relied on additional evidence, a close examination of the record demonstrates that the Orion attribution was decisive in practice. First, the forensic examination of the Applicant’s electronic devices revealed no scam-related communications, no financial transactions linked to the victims, and no direct technical evidence connecting the Applicant to the scam.³⁵

33. Secondly, the prosecution’s expert evidence concerning photographs and voice messages was inconclusive,³⁶ and the court-appointed expert expressly acknowledged that a false positive could not be excluded and that the authenticity of the alleged voice and video communications could not be verified.³⁷ In these circumstances, the testimonies of witnesses, taken alone or together, did not constitute independent corroboration capable of sustaining the attribution on their own.³⁸ The victims had never met the Applicant in person, and their identification relied exclusively on digital material such as photographs, voice messages, and online interactions,³⁹ which the Applicant argued could have been generated using publicly available content, as she was active in social media platforms, having more than 80,000 followers total,⁴⁰ and modern deepfake technologies. The possibility that such material was fabricated or altered could not be excluded, particularly in light of the established fact that the Applicant’s online account had previously been hacked.⁴¹

34. Against this evidentiary background, the Orion analysis provided the element that gave probative force to otherwise inconclusive material. It was the only component of the evidentiary record capable of linking the Applicant to the alleged conduct in the absence of

³⁴ Ibid.

³⁵ Case facts § 6.

³⁶ Case facts § 12.

³⁷ Case facts §15.

³⁸ Ana-Maria Telbis and Darko Pavlovksi, “Fair Trial Rights”, Council of Europe (2018), p.110; Creanga v. Romania[GC], app.no. 29226/03, § 88; Hajrulahu v. “The Former Yugoslav Republic of Macedonia”, app.no. 37537/07, § 84; Nachova and Others, v. Bulgaria[GC], app.nos. 43577/98 and 43579/98, § 147; Ireland v. The United Kingdom, app.no. 5310/71, § 161.

³⁹ Case facts §12.

⁴⁰ Case facts § 2.

⁴¹ Case facts § 6.

direct technical evidence, reliable forensic confirmation, or independent corroboration. The domestic courts' reliance on the Orion attribution therefore went beyond treating it as one element among others and effectively placed it at the centre of the evidentiary assessment, despite its inherent opacity and the unresolved doubts as to its reliability.

35. In such circumstances, the decisive weight accorded to the AI-generated attribution fundamentally shaped the assessment of guilt and directly affected the overall fairness of the proceedings.

1.2. Equality of arms and the Applicant's position vis-à-vis the prosecution

36. The Applicant submits that Article 6 § 1 of the Convention was violated, as the principle of equality of arms was not respected by the State of Valdora. She maintains that the authorities relied on evidence to which she was not granted access, thereby depriving her of any opportunity to contest or scrutinize that material, resulting in a clear procedural imbalance between the opposing parties.

1.2.1. Structural imbalance between the parties in access to the Orion evidence

37. The principle of equality of arms is an inherent feature of the broader concept of a fair trial. It requires that each party be given a reasonable opportunity to present its case under condition that does not place it at a substantial disadvantage vis-à-vis the opposing party.⁴² The primary purpose of these procedural rules is to protect the accused against any abuse of authority.⁴³ In criminal proceedings, equality of arms is closely linked to the adversarial principle. This means that both the prosecution and the defence must have knowledge of and opportunity to comment on the observations filed and the evidence adduced by the other party.⁴⁴ The failure to afford such access has weighed, in the Court's assessment, in favour of

⁴² Foucher v. France, app. no. 22209/93, § 34; Bobek v. Poland, app. no. 68761/01, § 56; Klimentyev v. Russia, app. no. 46503/99, § 95; Bulut v. Austria, app.no. 17358/90, § 47; Kuopila v. Finland, app .no. 27752/95, §27; G.B. v. France, app .no. 44069/98, § 58; Ternovskis v. Latvia, app.no. 33637/02, § 65; Krcmar and Others v. Switzerland, app.no. 35376/97, § 39; Gaggi v. Austria, app.no. 63950/19, § 48; Ocalan v. Turkey [GC], app.no. 46221/99, § 140; Kikabidze v. Georgia, app.no. 57642/12, § 40; Dombo Beheer B.V. v. The Netherlands, app. no. 14448/88, § 33.

⁴³ Coeme and Others v. Belgium, app.nos. 32492/96, 32547/96, 32548/96, 33209/96, 33210/96, § 102.

⁴⁴ Rowe and Davis v. The United Kingdom, app. no. 28901/95, § 60; Brandstetter v. Austria, app. no. 13468/87, § 67; Kikabidze v. Georgia, app.no. 57642/12, § 41; Dowsett v. The United Kingdom, app.no. 39482/98, § 41; Natunen v. Finland, app.no. 21022/04, § 39; Niderost-Huber v. Switzerland, app.no. 18990/91, § 24.

finding that the principle of equality of arms has been violated.⁴⁵ In *Bulut v. Austria*,⁴⁶ the commission considered that it is inherently unfair for the prosecution to make submissions to a court without the knowledge of the defence and without affording the defence opportunity to comment.

38. In the present case, this requirement was not satisfied. First, the Applicant emphasises the State-controlled nature of the evidence at issue. Orion was developed, certified, and defended by executive authorities, and its reliability was endorsed through general ministerial assurances rather than subjected to adversarial scrutiny.⁴⁷ The defence was therefore confined to commenting on conclusions advanced and validated by the State, without any meaningful possibility of examining their technical foundations.

39. Secondly, despite the State-controlled nature of the evidence, access to Orion's source code and training data was granted to the domestic courts and the court-appointed expert,⁴⁸ while the defence and its expert were categorically denied access to the same material.⁴⁹ As a result, the defence was unable to test, replicate, or independently verify the basis of the incriminating conclusions relied upon by the courts.

40. The fact that the prosecution's private expert did not enjoy full access to Orion's internal functioning does not neutralise this imbalance. The decisive disparity lay between the authorities responsible for developing and validating the system, together with the courts relying on it, on the one hand, and the defence, which was entirely excluded from access, on the other. The Court's case-law makes clear that allowing the defence merely to comment on evidence, without enabling it to test that evidence, particularly where it plays a central role in the assessment of the case, does not satisfy the requirements of equality of arms under Article 6 § 1 of the Convention.⁵⁰

41. The present case is analogous to *Rowe and Davis*, where the Court held that withholding material evidence from the defence, regardless of sensitivity, violated the principle of equality of arms, as it prevented effective scrutiny of the prosecution's case.⁵¹ Similarly, in *Matyjek v. Poland*, the denial access to crucial documents was found to create an

⁴⁵ Kikabidze v. Georgia, app.no. 57642/12, §42; Beraru v. Romania, app. no. 40107/04, § 70.

⁴⁶ Bulut v. Austria, app.no. 17358/90, § 46.

⁴⁷ Case facts, § 28 (4), p.6.

⁴⁸ Clarification Q. N18.

⁴⁹ Case facts, §11.

⁵⁰ Edwards and Lewis v. the United Kingdom [GC], app.nos. 39647/98 and 40461/98, § 46.

⁵¹ Rowe and Davis v. The United Kingdom, app.no. 28901/95, §§ 66-67.

impermissible imbalance depriving the accused of the opportunity to refute the allegations.⁵² The Applicant's situation is even more severe. She was denied access not merely to individual items of evidence, but to the entire technical foundation underpinning the central accusation against her. This placed the prosecution in a position of decisive evidentiary superiority as seen in number of the Court's cases, such as *Foucher v. France*, *Dombo Beheer v. The Netherlands*, etc.⁵³

42. In these circumstances, the Applicant submits that the proceedings were marked by a structural imbalance between the parties, which placed her at a substantial disadvantage vis-à-vis the prosecution and undermined the principle of equality of arms guaranteed by Article 6 § 1 of the Convention.⁵⁴

1.2.2. Lack of adequate justification and counterbalancing safeguards

43. The Court has consistently held that the right to disclosure of evidence is not absolute, however, any difficulties caused must be sufficiently counterbalanced by the procedures followed by the judicial authorities.⁵⁵ The Court therefore examines whether, in the proceedings as a whole, a fair balance was struck between the interests of the effective administration of justice and the defence's rights to adversarial proceedings and the equality of arms.⁵⁶

44. In the present case, the domestic courts relied on national security grounds to refuse the defence access to Orion's source code, training data and audit report.⁵⁷ While the Applicant does not dispute the national security may, in principle, constitute a legitimate aim, she submits that the manner in which this ground was invoked was neither foreseeable nor intelligible in her case. Domestic law did not define the concept of "national security" nor specify the circumstances, scope or limits under which it could justify withholding the determinative evidence in criminal proceedings. As a result, the Applicant was unable to foresee that the core incriminating evidence against her would be shielded in its entirety, or to

⁵² *Matyjek v. Poland*, app.no. 38184/03, §§ 59-63.

⁵³ *Kikabidze v. Georgia*, app.no. 57642/12, § 40; *Foucher v. France*, app.no. 22209/93, § 34; *Dombo Beheer v. The Netherlands*, app.no.14448/88, § 33; *Bobek v. Poland*, app.no. 68761/01, § 56; *Krcmar and Others v. The Czech Republic*, app.no. 35376/97, § 39.

⁵⁴ *Klimentyev v. Russia*, app. no. 46503/99, § 95; *Bulut v. Austria*, app.no. 17358/90, § 47; *Kuopila v. Finland*, app.no. 27752/95, §27; *G.B. v. France*, app.no. 44069/98, § 58; *Ternovskis v. Latvia*, app.no. 33637/02, § 65; *Gaggl v. Austria*, app.no. 63950/19, § 48; *Ocalan v. Turkey*[GC], app.no. 46221/99, § 140.

⁵⁵ *Jasper v. The United Kingdom*[GC], app.no. 27052/95, § 52; *Dowsett v. The United Kingdom*, app.no. 39482/98, § 41; *Atlan v. The United Kingdom*, app.no. 36533/97, § 40; *Natunen v. Finland*, app.no. 21022/04, § 40.

⁵⁶ *Farcas and Others v. Romania*, app.no. 30502/05, § 32; *Zavodnik v. Slovenia*, app.no. 53723/13, §75.

⁵⁷ Case facts § 11.

understand what concrete interests were allegedly at stake. The mere invocation of national security, without any explanation to its application to the specific material withheld, deprived the Applicant of any meaningful opportunity to challenge the necessity or proportionality of the restriction.

45. Crucially, the restriction was not accompanied by adequate counterbalancing safeguards. The sole measure relied upon the domestic courts consisted of permitting the defence to submit written questions to the Ministry responsible for Orion.⁵⁸ This mechanism did not provide access to the underlying material, did not allow for independent verification and did not enable the defence to test the reliability, methodology, or potential bias of the system. As confirmed by the Applicant's expert, generic assurances of compliance could not substitute for expert-level scrutiny of the evidence.

46. The inadequacy of these safeguards is further underscored by the decisive role attributed to Orion in the Applicant's conviction. The domestic courts expressly relied on the reported 96.4% behavioral match⁵⁹ as sufficient to establish guilt beyond reasonable doubt, the standard required by the Court in criminal proceedings.⁶⁰ Where restricted material plays such a determinative role, the Court's case-law requires particularly robust safeguards,⁶¹ which were entirely absent in the present case.

47. These deficiencies are especially problematic in the light of emerging CoE standards concerning the use of AI in high-risk contexts. The CoE Framework Convention⁶² emphasizes transparency, accountability, procedural fairness and effective remedies where AI systems are deployed in contexts of affecting individual liberty. While not invoked as an autonomous source of violation, those standards reinforce the interpretation of Article 6 § 1 and confirm that reliance on opaque and unchallengeable AI-generated evidence, without safeguards enabling effective adversarial scrutiny, is incompatible with the requirements of a fair trial.

⁵⁸ Ibid.

⁵⁹ Case facts §7.

⁶⁰ *Zyakun v. Ukraine*, app.no. 34006/06, § 40; *Salman v. Turkey*[GC], app.no. 21986/93, § 100; *Cyprus v. Turkey*[GC], app.no. 25781/94, § 112; *Sytnyk v. Ukraine*, app.no. 16497/20, § 144; *Petukhov v. Russia*, app.no. 17853/09, § 27; *Jalloh v. Germany* [GC], appno. 54810/00, § 67; *Labita v. Italy* [GC], app.no. 26772/95, § 121.

⁶¹ *Manucharyan v. Armenia*, app.no. 35688/11, § 47(v, vi); *Al-Khajawa and Tahery v. The United Kingdom*[GC], app.nos. 26766/05 and 22228/06, § 119; *Schatschaschwili v. Germany*[GC], app.no. 9154/10, §§ 111-131.

⁶² Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law.

48. The Applicant emphasises that the foregoing analysis concerns the requirements of Article 6 § 1 of the Convention as regards adversarial proceedings and equality of arms. While the restrictions on access to the Orion evidence also have implications for the preparation of the defence, which fall to be examined under Article 6 § 3(b), the present section addresses the structural fairness of the proceedings as a whole. The specific impact of the impugned restrictions on the Applicant's ability to prepare her defence will be examined separately below.

49. In light of the foregoing, the Applicant submits that the proceedings against her, taken as a whole, did not satisfy the requirements of fairness under Article 6 § 1 of the Convention. The domestic courts relied decisively on AI-generated evidence that was not subject to effective adversarial scrutiny, accorded it determinative weight despite unresolved doubts as to its reliability, and organised access to that evidence in a manner that placed the Applicant at a substantial disadvantage vis-à-vis the prosecution. The absence of adequate justification and counterbalancing safeguards further undermined the equality of arms and the adversarial nature of the proceedings. Accordingly, the Applicant submits that Article 6 § 1 of the Convention has been violated.

2. There has been a violation of Article 6 § 3(b) of the Convention

2.1. Inadequate facilities for the preparation of the defence

50. The Applicant submits that the defence was not afforded the practical facilities required to prepare its case effectively in accordance with Article 6 § 3(b) of the Convention

51. Article 6 § 3(b) of the Convention guarantees every accused person “adequate facilities for the preparation of his defence” and safeguards two core components of the right to defence: the availability of adequate facilities and sufficient time for preparation. It requires that the accused be placed in a position to carry out all defence activities that are genuinely necessary for effective trial preparation, including the ability to structure the defence strategy freely and to advance all relevant arguments capable of influencing the determination of the case.⁶³ Whether the time and facilities afforded to the defence meet the

⁶³ Gregačević v. Croatia, app.no. 58331/09, § 51.

Convention standard must be assessed in a concrete and context-specific manner, taking account of the circumstances of the proceedings as a whole.⁶⁴

52. The Court has consistently held that the guarantees contained in Article 6 § 3 are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1 and are therefore normally examined together.⁶⁵ In the present case, however, the Applicant has presented her complaints under Article 6 § 1 in the context of the overall fairness of the proceedings. The complaint under Article 6 § 3(b) is presented separately, for reasons of analytical clarity, as it concerns the specific impact of the impugned restrictions on the practical facilities available for the preparation of the defence. This approach does not detract from the interrelationship between Articles 6 § 1 and 6 § 3(b), but serves to clarify the manner in which the restrictions affected the Applicant's defence.

53. In the present case, the criminal proceedings against Ms Orwell were fundamentally shaped by the forensic AI system Orion, whose output allegedly established a 96.4% behavioural match between the Applicant and the scam profiles.⁶⁶ The domestic courts explicitly relied on this AI-generated evidence as a central basis for the conviction. At the same time, the defence was denied access to Orion's source code, training data, and audit report, despite repeatedly arguing that these materials were indispensable for assessing the reliability, limitations, and potential error rate of the system.⁶⁷

54. Given the technical complexity of Orion and the decisive weight attributed to its conclusions, effective defence preparation necessarily depended on the ability to scrutinise the system's functioning. The absence of such access directly affected the defence's practical capacity to prepare its case.

55. Accordingly, Article 6 § 3(b) of the Convention is engaged in the present case.

2.2. Justification for the restriction on defence facilities

56. The Applicant submits that the restriction on access to Orion's source code, training data, and audit report was not justified, as it was neither accompanied by sufficiently precise and foreseeable legal grounds.

⁶⁴ *Iglin v. Ukraine*, app.no. no. 39908/05, § 65.

⁶⁵ *Sigurður Einarsson and Others v. Iceland*, no. 39757/15, § 85.

⁶⁶ Case facts, § 7.

⁶⁷ Case facts, § 11.

57. The Court’s case-law recognises that the right to disclosure of evidence is not absolute and that restrictions may, in principle, be justified by public-interest considerations, including national security. However, any limitation on defence facilities must be strictly necessary, based on sufficiently precise and foreseeable legal grounds, and applied in a manner that allows the accused to understand the nature and scope of the restriction imposed. In the case of *Jasper v. the United Kingdom*,⁶⁸ the Court confirmed that evidence may be withheld on public-interest grounds, including national security, but only if the defence is kept informed and the domestic procedure includes relevant safeguards.

58. In the present case, these requirements were not met.

59. First, the justification was articulated in general and abstract terms, without a clear procedure requiring an assessment of whether full or partial disclosure, expert-only access, judicial inspection, or other tailored solutions could reconcile national security concerns with the defence’s preparation needs.

60. The Applicant does not, *in abstracto*, dispute that the protection of national security may constitute a legitimate aim capable of justifying restrictions on disclosure.⁶⁹ However, she submits that, in the present case, the reliance on national security grounds was neither foreseeable nor sufficiently intelligible.⁷⁰ The domestic law invoked by the authorities does not define the notion of “national security”, nor does it specify the circumstances, scope or limits under which it may justify the withholding of evidence in criminal proceedings.⁷¹ As a result, the Applicant could not reasonably foresee that the determinative AI-generated evidence in her case would be withheld on that basis, nor could she understand what concrete interests were allegedly at stake.

61. Second, the mere invocation of national security, without any explanation of its content or application to the specific material withheld, deprived the Applicant of the ability to meaningfully challenge the necessity of the restriction. In the absence of a legal definition or clear criteria, the concept of “national security” remained vague and indeterminate, granting the authorities an excessively broad discretion, contrary to the principles developed

⁶⁸ *Jasper v. UK*, app no. 27052/95, § 52.

⁶⁹ *Rowe and Davis v. the United Kingdom* [GC] App no. 28901/95, § 61 *Regner v. the Czech Republic* [GC] App no. 35289/11, § 148

⁷⁰ *The Sunday Times v. the United Kingdom*, App no. 6538/74, § 49; *Malone v. the United Kingdom*, App no. 8691/79, §§ 66–68; *Shimovolos v. Russia* App no. 30194/09, § 68

⁷¹ *Roman Zakharov v. Russia* [GC], App no. 47143/06, §§ 228–230; *Iordachi and Others v. Moldova*, App no. 25198/02, § 50; *Klass and Others v. Germany*, App no. 5029/71, § 50.

in the Court's case-law, such as *Malone v. The United Kingdom*,⁷² *Rotaru v. Romania*⁷³ and etc.

62. Finally, the domestic courts accepted the non-disclosure without conducting a concrete, case-specific assessment of whether withholding the requested materials was necessary in light of their relevance to the defence. Unlike in cases such in *Jasper v. The United Kingdom*⁷⁴ and *Fitt v. the United Kingdom*,⁷⁵ where the trial judge continuously assessed the necessity of withholding material and allowed defence input as far as possible, here the courts did not engage in any ongoing evaluation of the justification for non-disclosure or its impact on the defence's ability to prepare its case.

63. Accordingly, the restriction on access to Orion-related materials was not justified by a legitimate, sufficiently precise and foreseeable grounds in violation of Article 6 § 3 (b) of the Convention.⁷⁶

2.3 Absence of adequate counterbalancing safeguards

64. The Applicant submits that, even assuming that the restriction on access to the Orion materials pursued a legitimate aim, the domestic authorities failed to put in place any measures capable of counterbalancing for its impact on the preparation of the defence, as required under Article 6 § 3 (b) of the Convention.

65. Under the Court's established case law, where access to materials relevant for the defence is restricted, the overall fairness of the proceedings depends on the existence of adequate counterbalancing safeguards capable of compensating for the limitation.⁷⁷ Such safeguards may include effective judicial scrutiny of the undisclosed material, independent and adversarial expert assessment, or alternative procedures enabling the defence to meaningfully challenge the reliability and probative value of the evidence, even in the absence of full disclosure.⁷⁸ Where domestic courts accept non-disclosure without examining its concrete impact on the defence's ability to contest decisive evidence, or without ensuring compensatory procedural mechanisms, the restriction risks impairing the very essence of the rights guaranteed under Article 6 § 3 (b).

⁷² *Malone v. The United Kingdom*, app.no. 8691/79, §§67-68.

⁷³ *Rotaru v. Romania*[GC], app.no. 28341/95, §§55-59.

⁷⁴ *Jasper v. The United Kingdom*, app. no. 27052/95, §52.

⁷⁵ *Fitt v. The United Kingdom*, app. no. 29777/96, § 45 .

⁷⁶ *Moiseyev v. Russia*, app.no. 62936/00, §§ 212–217; *Mayzit v. Russia* app.no. 63378/00, §§ 78–83.

⁷⁷ *Rowe and Davis v. the United Kingdom* [GC] app. no. 28901/95, §§ 61.

⁷⁸ *Jasper v. the United Kingdom*[GC], app no. 27052/95, §§ 52–56.

66. In *Rowe and Davis*,⁷⁹ the lack of such procedural safeguards was central to the Court's finding of a violation, because domestic courts were not permitted to assess the relevance and impact of the withheld material and thus the defence could not effectively challenge the prosecution's case. By contrast, in *Jasper v. the United Kingdom*⁸⁰ and *Fitt v. the United Kingdom*,⁸¹ the Court accepted restrictions on disclosure only because the domestic procedures ensured that the defence was kept informed to the greatest extent possible. In particular, in *Jasper* the Court held that the defence "*were kept informed and were permitted to make submissions and participate in the above decision-making process as far as was possible without revealing the material which the prosecution sought to keep secret*" and that "*the need for disclosure was at all times under assessment by the trial judge*," thus meeting the requirements of adversarial proceedings and equality of arms.

67. No such compensatory measures were present in the Applicant's case. Firstly, although the defence was permitted to submit written questions to the Ministry responsible for Orion, this indirect mechanism could not substitute for direct access to the technical materials underpinning the prosecution's case. Both the defence-appointed expert and the court-appointed independent expert expressly stated that they were unable to assess the reliability, limitations, or potential error rate of the Orion system without examining its source code, training data, and audit documentation.⁸²

68. Secondly, the prosecution expert's testimony could not operate as an effective safeguard. That expert likewise lacked full access to Orion's internal functioning and was affiliated with a private company involved in AI development. As a result, no genuinely independent or adversarial expert scrutiny was available, and the defence was not placed in a position to meaningfully scrutinise the AI-generated evidence upon which the conviction was largely based.

69. Thirdly, the Applicant stresses the following, the Court's case-law makes clear that restrictions on defence rights may only be justified where effective counterbalancing safeguards exist. ECHR's jurisprudence identifies such safeguards as judicial review of undisclosed materials,⁸³ appointment of independent experts to verify evidence,⁸⁴ and

⁷⁹ *Rowe and Davis v. the United Kingdom* [GC], app. no. 28901/95 § 61.

⁸⁰ *Jasper v. The United Kingdom* [GC], app. no. 27052/95, § 52.

⁸¹ *Fitt v. The United Kingdom*, app. no. 29777/96, § 45.

⁸² Case facts, § 11; 13; 14.

⁸³ *Jasper v. The United Kingdom*, app.no. 27052/95, § 52; *Regner v. Czech Republic* [GC], no. 35289/11, §§ 148–153.

⁸⁴ *Mantovanelli v. France*, app.no. 10572/83, §36.

procedural avenues to question the prosecution or relevant authorities.⁸⁵ Crucially, such safeguards must restore the defence's practical capacity to prepare its case, rather than merely reassure the court as to the reliability of the evidence relied upon. In the present case, none of these requirements were satisfied.

70. The written questions addressed to the Ministry did not function as a genuine preparation tool and did not allow the defence to independently scrutinise Orion's methodology or outputs. Executive assurances regarding Orion's compliance with regulatory or ethical standards could not replace technical access, since without access to the source code, training data, and audit report, the defence was unable to verify the system's conclusions in any meaningful way. Similarly, the court-appointed independent expert was unable to examine the underlying data or test Orion's outputs fully, and therefore could not substitute for meaningful defence access or counter-expertise.

71. Moreover, the domestic courts failed to consider any controlled-access solutions capable of preserving defence preparation despite the invocation of secrecy. In particular, they did not examine whether defence counsel or experts could have been granted access to the relevant materials under a non-disclosure agreement, whether partial or redacted disclosure comparable to that afforded to the court-appointed expert was feasible, or whether other tailored arrangements could reconcile national-security concerns with the defence's preparation needs. Such measures would not have required full public disclosure, yet could have enabled the defence to understand, assess, and meaningfully contest the prosecution's technical evidence. The failure to explore such controlled-access solutions stands in sharp contrast to the Court's case-law and confirms that no effective counterbalancing safeguard was put in place.

72. In light of the foregoing, the Applicant submits that the restrictions imposed on her access to the Orion-related materials deprived her of the adequate facilities required for the preparation of her defence within the meaning of Article 6 § 3(b) of the Convention.

3. Cumulative effect of the procedural deficiencies under Article 6 §§ 1 and 3(b) of the Convention

73. The Applicant submits that the procedural deficiencies identified in this case went to the very core of the evidentiary assessment underpinning the criminal proceedings against

⁸⁵ *Rowe and Davis v. UK* [GC], no. 28901/95, §§ 61–65; *Van Mechelen and Others v. Netherlands*, app.nos. 21363/93 et al., §§ 54–60.

her. The attribution findings generated by the Orion system did not merely constitute one item of evidence among others; they decisively shaped both the direction of the investigation and the assessment of guilt at trial. Once Orion reported a 96.4% behavioural match, the investigation was steered exclusively towards the Applicant,⁸⁶ despite the absence of scam-related communications, victim-linked financial transactions, or other direct technical evidence on her devices or personal accounts,⁸⁷ and despite the inconclusive nature of the remaining forensic material.

74. This imbalance was further aggravated by the severity of the penalties imposed, namely a sentence of four years and three months' imprisonment and an order to pay EUR 30,000 in compensation.⁸⁸ In these circumstances, the absence of meaningful adversarial access to the technical foundations of the decisive evidence, combined with the lack of foreseeable justification and effective counterbalancing safeguards, undermined the Applicant's ability to challenge the case against her and rendered the proceedings, assessed as a whole, incompatible with the guarantees of fairness under Article 6 of the Convention.

III. Conclusion

75. In light of the foregoing submissions, the Applicant respectfully requests the Court to: (a) declare the application admissible; (b) hold that the Respondent has violated the Applicant's rights under Article 6 § 1 and Article 6 § 3(b) of the Convention; and (c) grant just satisfaction under Article 41 of the Convention in respect of the pecuniary and non-pecuniary damage suffered by the Applicant.

⁸⁶ Case facts § 7.

⁸⁷ Case facts § 6.

⁸⁸ Case facts § 12.